**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**SECOND APPEAL NO.150 OF 2006**

M/s.W.R.Talwalkar Brothers ..Appellant.
Vs.
M/s. Thirthroop Electricals ..Respondent.

Mr.P.K.Hushing & Mr.K.J.Kandpile, advs. for the Appellant.

Mr.Vachan Bodke i/b M/s.Chitnis Vaithy & Co., adv. for the Respondent.

**CORAM : J.H.BHATIA, J.**
**DATE : JULY 6, 2007.**

P.C.

1. Heard Mr.Hushing the learned counsel for the Appellant and Mr.Vachan Bodke the learned counsel for the respondent.

2. This second appeal is filed by the original defendant. Admittedly, the defendant had given a contract to the plaintiff/respondent to carry out certain work and the order was placed on 30th November, 1996. Work was to be completed by 31st December, 1996. As per agreement, 50% amount was to be paid in advance into instalments. Balance amount was to be paid on completion. Due to certain difficulties, the work could not be completed upto 31st December, 1996 and was actually completed on 9th May, 1997. In spite of agreement, advance was not paid. However, certain

payments were made as and when the bills were submitted by the plaintiff/respondent to the defendant/appellant. The plaintiff/respondent filed suit on 4-6-2000 claiming amount of Rs.1,63,671/- which included the balance amount of Rs.1,01,982/- plus interest at the rate of 20% and notice charges. The trial Court held that only an amount of Rs.17,500/- was within the limitation. Remaining amount based on earlier running bills, which were not paid, had become time barred when the suit was filed. Accordingly, the suit was partly decreed. The plaintiff preferred appeal no.150 of 2003 and after hearing the parties, the learned District Judge allowed the appeal and decreed the complete suit. According to the Appellate Court, the amount of running bills could not be barred by the limitation as the work was completed on 9-5-1997.

3. Admittedly, the work was completed on 9-5-1997 and the balance amount of the work was to be paid on that day. If the period of limitation has to be counted from that day, the suit could be filed within three years, i.e. on or before 9-5-2000. However, that day was during the summer vacation and the suit was filed on 5-6-2000, i.e. the first day of re-opening of the Court after summer vacation. As such it is within the limitation. Not only this, the record reveals that on 27-3-1998 some settlement had taken

place between the parties and the defendant had informed the plaintiff about that settlement. Infact that amounts to acknowledgment of the liability and the fresh period of limitation would begin to run from that day. As such suit was clearly within a period of limitation. Besides this no question of law is involved in the matter.

4. Second Appeal stands dismissed summarily.

**[J.H.BHATIA, J.]**

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**CIVIL APPLICATION NO.348 OF 2006**
IN
**SECOND APPEAL NO.150 OF 2006**

M/s.W.R.Talwalkar Brothers ..Applicant.
Vs.
M/s. Thirthroop Electricals ..Respondent.

Mr.P.K.Hushing & Mr.K.J.Kandpile, advs. for the Applicant.

Mr.Vachan Bodke i/b M/s.Chitnis Vaithy & Co., adv. for the Respondent.

**CORAM : J.H.BHATIA, J.**
**DATE : JULY 6, 2007.**

P.C.

1. As the Second Appeal No.150 of 2006 is dismissed summarily, this application does not survive and stands disposed off accordingly.

**(J.H.Bhatia,J.)**